

Remarks

Applicants have amended claims 1, 2, 5, 7, 10-19, 42-43, and 47-49 to expedite prosecution. Specifically, Applicants have amended claim 1 to make explicit that which was implicit, namely, that SEQ ID NO: 1 is linked to SEQ ID NO: 5. The amendment is grammatical. Applicants have also amended claim 2 to an embodiment, in which the promoter is mutated at one or more API sites present in SEQ ID NO: 1. Amendment is supported by the specification as a whole and by claims 1 and 2 as originally filed. Claims 34 and 50 have been amended to a pharmaceutical compositions directed to claims 1 and 2 respectively. In view of the substance of these claims, the amendments are clerical. Claims 18, 19, 48 and 49 have been amended to change the article “a” to an article “the”. The amendment is grammatical.

In view of the above, Applicants believe no new matter has been introduced by the amendments. Accordingly, Applicants respectfully request that the amendments be entered.

The Office objected to claims 1, 2, 18, 19, 48, 49 and 50.

Specifically, the Office indicated that claims 18, 19, 48 and 49 are improper because they recite the article “a” instead of “the”. In view of the amendments to these claims, Applicants respectfully submit that the objection has been obviated.

The Office also objected to claims 34 and 50 stating that they are improper as they do not necessarily include all the limitations of the claims they depend on. Applicants believe that the present language of the claims unequivocally indicates that they encompass a pharmaceutical composition comprising the compounds of claims 1 and 2. Therefore, the objection should be withdrawn.

The Office further objected to claims 1 and 2 as unclear. With respect to claim 1, Applicants have still further simplified the language to make it unequivocally clear that the sequence is SEQ ID NO: 1 linked at its 3' end to SEQ ID NO: 3. With respect to claim 2, Applicants have clarified that the API elements are present in SEQ ID NO: 1, not 3 as indicated by the specification and discussed by the Office on page 3 of the April 16, 2010 Office Action.

In view of the above, Applicants respectfully submit that the objections to claims 1 and 2 should also be withdrawn.

There being no prior art rejections against claims 1, 5-15, 17-19, and 34, Applicants respectfully submit that claims 1, 5-15, 17-19, and 34 are now in condition for allowance.

The Office rejected claims 2, 35-40 and 42-49 as allegedly obvious under 35 U.S.C. §103(a) over Novick (WO 99/09063, U.S. Patent No. 6,605,280)(“Novick”) in view of Pance et al. (FASEB J. Feb. 25,

2002, pp. 631-633)("Pance") and claim 41 was rejected further in view of Hurgin et al. (Journal of Interferon and Cytokine Research 24:S. 73, 2001)("Hurgin"), which described promoter fusions with luciferase gene. Specifically, the Office contended that Novick teaches SEQ ID NO: 3 with SEQ ID NO: 5 at the 3' end of it.

Applicants respectfully submit that the rejection should be withdrawn for the following reasons.

Claim 2 as amended is directed to an embodiment encompassing only the entire promoter (SEQ ID NO: 1) linked to SEQ ID NO: 5 and having AP-1 site mutations.

Novick does not describe, teach or suggest a polynucleotide sequence of SEQ ID NO: 1 which comprises AP1 site mutations or suggest why one would want to insert such mutations to the sequences they have described.

Pance does not overcome this deficiency, as also Pance does not describe a polynucleotide with AP1 site mutations.

Similarly also Hurgin does not overcome the deficiency in Novick, as also Hurgin does not describe a polynucleotide with AP1 site mutations.

Accordingly, the cited prior art does not teach all the elements of the claims and the claims and the rejection under 35 U.S.C. §103(a) of claims 2, 35-40 and 42-49 and 41, should be withdrawn.

In view of the foregoing, Applicants respectfully submit that all claims are in condition for allowance. At minimum, the amendments to the claims will reduce the issues on Appeal. Early and favorable action is requested.

In the event that any additional fees, such as additional claims fees are required, the Commissioner is hereby is authorized to charge any such additional fees to Nixon Peabody LLP deposit account No. 50-0850.

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Respectfully submitted,

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